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5 UNITED STATES BANKRUPTCY COURT
6 NORTHERN DISTRICT OF CALIFORNIA

7 In re

8 RAIL-WAYS, INC.,

No. 01-10960

9 Debtor(s).
10 _____/

11 CHARLES SIMS, Liquidating Agent,

12 Plaintiff(s),

13 v.

A.P. No. 03-1034

14 RONALD F. POULSON,

15 Defendant(s).
16 _____/

17 Memorandum on Counter-motions for Summary Judgment
18 _____

19 Debtor Rail-Ways, Inc., is a private corporation hired by the North Coast Rail Authority
20 ("NCRA") to provide consulting services. The NCRA is a public entity created by the California
21 Legislature to acquire and operate the Eureka Southern Railroad. Defendant Ronald F. Poulson is a
22 former employee of the debtor. In this adversary proceeding plaintiff Charles Sims, the Liquidating
23 Agent selected pursuant to the debtor's confirmed Chapter 11 plan, seeks to recover a payment of
24 \$81,864.63 to Poulson as a preference. There appearing to be no disputed facts, both sides seek
25 summary judgment.

26 In late 2000, Poulson obtained a \$79,689.34 judgment against the debtor. On January 11, 2001,

1 he followed the procedure set forth in California Code of Civil Procedure § 708.710 *et seq.* to obtain a
2 lien on the \$2 million the NCRA owed to the debtor.¹ On February 26, 2001, the NCRA paid Poulson
3 \$81,864.63 from “bailout” funds it received from the state. The debtor filed its Chapter 11 petition on
4 April 17, 2001. The only issue in this case is whether the transfer took place on January 11 or February
5 26, 2001.²

6 This dispute is governed by § 547(3)(3) of the Bankruptcy Code, which provides that a transfer
7 is not made until the debtor has acquired rights in the property transferred. Thus, garnishment of a
8 judgment debtor’s wages is a preference only if the debtor earned the wages during the preference
9 period, even if the garnishment was perfected outside the preference period. *In re Morehead*, 249 F.3d
10 445, 448-49 (6th Cir. 2001). Sims argues that since the bailout was funded during the preference period
11 the payment was a preference even though the lien was perfected outside the preference period.

12 Sims’ argument would make sense if the judgment debtor was the NCRA, as it had no rights in
13 the bailout funds until it received them. However, the judgment debtor was Rail-Ways, Inc., which was
14 owed money by the NCRA. Rail-Ways had a right to payment from the NCRA which existed on January
15 11, 2001, regardless of whether the NCRA had any money at that time, so that is when the transfer
16 occurred. Stated another way, a transfer of an account receivable occurs when the attachment is
17 perfected, not when the obligation which created the receivable is satisfied.

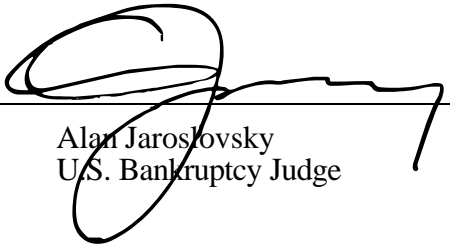
18 For the foregoing reasons, summary judgment will be granted in favor of Poulson. Sims shall
19 recover nothing by his complaint, which will be dismissed with prejudice. Poulson shall recover his
20 cost of suit. Counsel for Poulson shall submit an appropriate form of order granting his motion for
21 summary judgment and an appropriate form of judgment.

23 ¹CCP § 708.780(a) provides, in pertinent part: “Filing of the abstract or certified copy of the
24 judgment . . . creates a lien on the money owing and unpaid to the judgment debtor by the public entity . .
25 . . .”

26 ²Although Poulson is a former employee, Sims does not argue that he was an insider. He
concedes that if the transfer was made before January 17 he has no case.

1 Dated: December 10, 2003

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Alan Jaroslovsky
U.S. Bankruptcy Judge